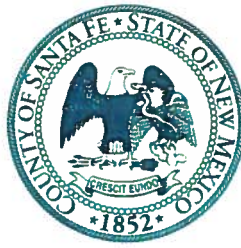


Daniel "Danny" Mayfield  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

**DATE:** July 29, 2014

**TO:** Board of County Commissioners

**FROM:** Jose E. Larrañaga, Development Review Team Leader *JEL*

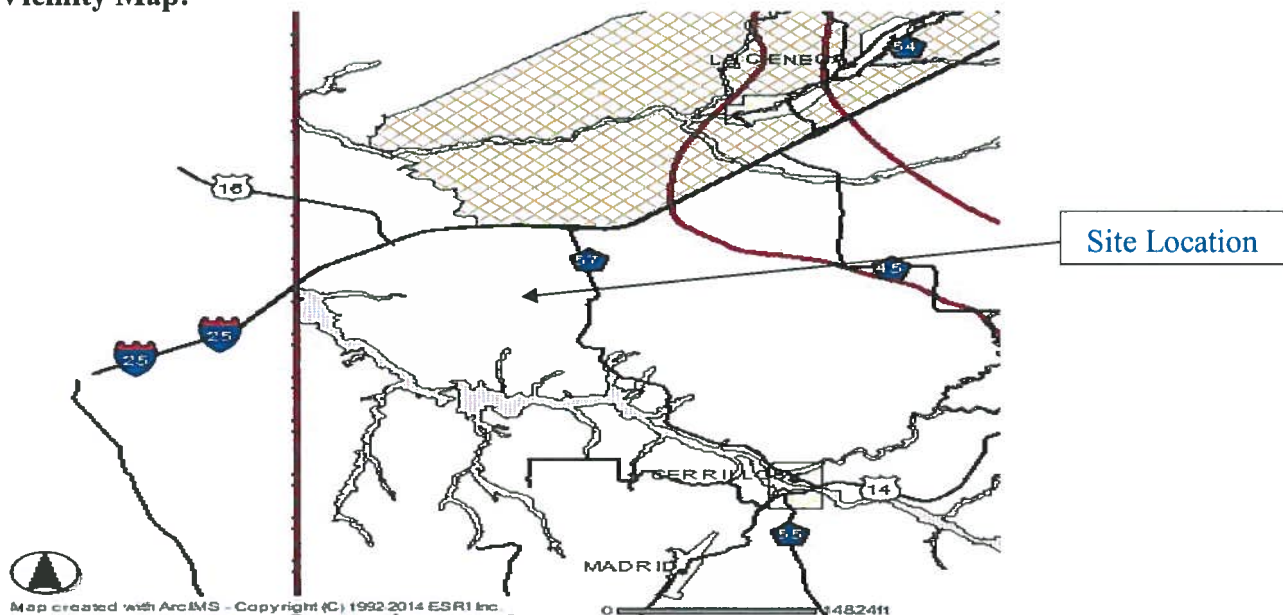
**VIA:** Katherine Miller, County Manager  
Penny Ellis-Green, Growth Management Director *PEG*  
Vicki Lucero, Building and Development Services Manager *VL*  
Wayne Dalton, Building and Development Services Supervisor *WD*

**FILE REF.:** CDRC CASE # ZMXT 13-5360 Buena Vista Estates, Inc. & Rockology LLC.

### ISSUE:

Buena Vista Estates, Inc, Applicant, Jim Siebert, Agent, requests zoning approval to create a mining zone, on a 50 acre  $\pm$  site, to allow the extraction of aggregate for use as construction material. The site will take access off of Waldo Canyon Road (County Road 57) and the property is located on the south side of I-25, within Section 21, Township 15 North, Range 7 East (Commission District 3).

### **Vicinity Map:**



## **SUMMARY OF ADDITIONAL INFORMATION REQUESTED AND OBTAINED:**

On June 11, 2014, the Board of County Commissioners (BCC) held a special meeting on the above-referenced case. Staff presented a staff report (Exhibit 1), with exhibits, to the BCC, the Agents for the Applicant presented material and testified in support of the application, and the BCC heard testimony from the public. The BCC continued the public hearing until July 8, 2014, at 10:00 a.m. On June 17, 2014, the Agent representing the Applicant submitted a request to postpone the continued public hearing until August 12, 2014, due to neither the Attorney nor Agent for the applicant being available on July 8.

The BCC identified specific issues to be addressed at the continued public hearing and by the Santa Fe County Attorney, directing staff to obtain additional information on those issues. Those issues are identified below along with the response by staff:

1. Provide a review of the maps provided by the public relative to proximity of the mine to homes and roads:

Santa Fe County Geographic Information Systems Division (GIS) has reviewed the maps provided by the public at the June 11<sup>th</sup> hearing. GIS has determined that these maps show a view shed from both Waldo Canyon Road and I-25 and that no determination can be made on the accuracy of these maps due to the following reasons: unknown source of data; unknown map creator; and unknown GIS system used. In addition to this lack of data, there was no information provided on the analysis itself, such as if the view shed was done from ground level, eye level, or a 20 foot level (Exhibit 3).

2. Provide maps showing the proximity of the proposed mine to homes, businesses within a 15 mile radius, communities, including but not limited to La Cienega, La Cieneguilla, Cerillos, La Bajada and Madrid. Attain additional information associated with the view shed beyond the scope of the immediate area of the proposed mine site:

GIS has created maps which illustrate the view shed within a 1, 5, 10 and 15 mile radius of the proposed 50 acre mine site along with homes, businesses, and communities within these radii (Exhibit 4).

On July 24, 2014, GIS staff conducted a site visit to the proposed mine site. The Applicant placed a 20' story pole at the northern corner of the 50 acre site. GIS took photographs from various points within the view shed to demonstrate the actual view of the subject area from those points (Exhibit 13).

3. Request formal feedback from the Pueblo of Cochiti and the Pueblo of Santo Domingo:

On June 16, 2014, a set of plans, the Applicants' report, and a cover letter requesting a formal review and/or comments was hand delivered to the Honorable Oscar K. Lovato, Governor of the Pueblo of Santo Domingo, and the Honorable Joseph H. Suina, Governor of the Pueblo of Cochiti (Exhibit 5). There has not been a response to those requests to date.

The Pueblo of Tesuque, however, contacted staff to discuss the proposed mine and mailed staff a letter, dated June 20, 2014, in regards to the application (Exhibit 6). It states that “strip mining in this area would have a detrimental impact to historical and archeological resources and Pueblo cultural sites that, since time immemorial, have traditional, religious, and cultural significance to the Pueblo.”

4. Are improvements of the road (County Road 57) part of the process:

Santa Fe County Public Works Department has recommended as a condition of approval that County Road 57 be improved by applying a two inch overlay of hot mix asphalt (HMA), starting from the East Interstate 25 Frontage to the most southern boundary of the access road to the site as per Code requirements (Exhibit 1, pgs. 10 & 11).

5. An evaluation of gross receipts that can clearly and simply be transparently delineated with this particular project:

A review of the projected gross receipts was done by the County Finance Department (Exhibit 7). The Finance Department’s conclusion was that: “Buena Vista Estates, Inc. and Rockology, LLC estimates of the taxable gross receipts and corresponding tax revenue from the proposed mining operation involve a number of assumptions with which the Finance Division has no basis to agree or disagree. Without knowing who will purchase the materials (as a taxable transaction or a non-taxable transaction), a solid estimate cannot be provided. In the best case scenario, if 100% of the Rockology mining operation’s transactions are gross receipts taxable, then the directly attributable revenue would be \$240,625 of which \$179,375 would be revenue to the State of New Mexico and \$61,250 would be revenue to Santa Fe County. However, in the worst case scenario, if 100% of the transactions are non-taxable, then there would be no directly attributable revenue derived from the Rockology mining operation.”

6. Provide information on the material being mined at the Santo Domingo Mine and the size of the site:

Staff was in contact with Kenneth Pin, Planning Director for the Santo Domingo Pueblo, and he stated that the site is leased to and operated by Lafarge.

The Applicant provided some information concerning this mine site, as follows: The material extracted from this site is sand and gravel and the site is estimated to be between 200 and 300 acres. This site accesses off of NM Highway 22 (Exhibit 8).

7. How the property is being marketed:

Staff has researched the advertisement for the sale of this property and found a website listing the property. The property is advertised as a 5,200 ± acre site with “tremendous development potential, both in terms of a residential master plan and as an aggregate

resource.” (Exhibit 9 contains a listing printed on July 28, 2014, from the website [www.cbre.us](http://www.cbre.us).)

8. County policies associated with the sale of potable water, for either residential or commercial use, from the bulk water services from the Santa Fe County Utilities dispensing facility located at 13B Camino Justicia:

The process for becoming a bulk water customer is to fill out an application, providing proof of address and indicating type of customer (residential or commercial). The new customer is given an account number and must pre-pay. At the bulk water dispensing station, the customer enters the customer number into the machine and buys water on a debit basis, drawing against the pre-payment. Customers then periodically recharge their account. This is the same process that other area bulk water suppliers use (City of Santa Fe, City of Rio Rancho, for example).

Current rates are \$0.01/gallon residential, \$0.02/gallon commercial.

The bulk water station makes water available for potable domestic use and commercial uses, and has several purposes:

- Make access to water more convenient for those lacking waterlines for regular water service and having poor groundwater resources.
- Prevent or minimize water theft from hydrants.
- Minimize predatory water sales practices.

For these reasons, the County has not promulgated any policies that would limit potential customers from signing up. Market forces are also involved. The commercial rate is such that it makes sense for a temporary use like a construction project or occasional dust control, but is generally prohibitively expensive for a sustained use.

The County does monitor usage to make sure we stay within the total water allocation. The County allocated 30 acre-feet/year of water of total County capacity to bulk water sales in 2004 or earlier. In 2013, total bulk water sales amounted to 13.9 acre-feet, or less than half of the total allocation. Using a 2% growth in bulk water sales per year, which is slightly higher than the projected population growth rate, the total allocation will last 32 years. The Rockology water budget is 2.19 acre-feet/year. As indicated above, there is adequate room in the bulk sales water allocation to accommodate this use.

(Exhibit 10 contains documents concerning County bulk water sales, including purchases by customer during calendar year 2013).

9. The use of City effluent water: how a business or an individual attains the use of the effluent water; can City effluent water be used for the proposed use; does dispensing of reclaimed water for application to any area on an ongoing basis require a ground water discharge permit:

(Exhibit 11 contains documents regarding this issue.)

The City of Santa Fe issued a letter to Mr. Steven A. Hooper, owner of Rockology Limited LLC, in regards to the reclaimed water use agreement and permit that the City issued to Rockology. The letter states: "By code, the term of the effluent use must be less than twelve (12) months. Rockology received the Permit in May 2, 2014. Therefore Rockology's Permit to receive treated effluent will expire prior to May 2, 2015. The City further notes that it has no release of liability for the City of Santa Fe on file. In addition, the *Reclaimed Water Use Requirements* Form provided by the City also states that uses are limited to temporary or intermittent uses, and, dispensing of reclaimed water for application to any Area on an ongoing basis rather than temporary or intermittent, shall require a ground water discharge permit. Any long term use of treated effluent requires a contract authorized by the governing body under Santa Fe City Code § 22-13.9. At present, Rockology has no long term effluent agreement with the City."

The New Mexico Environmental Department Ground Water Quality Bureau reviewed this application and stated: "in order for NMED to make an official determination whether a Discharge Permit might be required, the Applicant is advised to file a Notice of Intent (NOI) with the Ground Water Quality Bureau, which would include the submittal of information relevant to the potential impacts to ground water quality".

10. What are the regulatory responsibilities and requirements associated with mining and the connection with the Land Development Code and the regulatory framework of the State of New Mexico; an analysis of the potential litigation of this case; the cost of land and the increase of the cost of land associated with what occurred on the La Bajada Mesa and the relevance to this case; ownership of mineral rights on this property:

These questions were directed to the Santa Fe County Attorney for discussion during the closed deliberations of the BCC with regard to this administrative adjudicatory proceeding.

11. During the June 11<sup>th</sup> hearing, there was discussion regarding the water budget submitted by the Applicant for dust control and reclamation of the mine site. As a result, a review of the proposed water budget was done by the County Hydrologist (Exhibit 14). The conclusions were that:
  - a. "without more specific information on the proposed mining operation, namely, duration of crushing operation and area involved in dust control, it is not possible to determine if the proposed water budget for dust control is reasonable"; and
  - b. "it appears amount of water proposed for re-vegetation purposes may not be sufficient to meet the water demand of grasses in this area."

In addition to the information gathered by staff, the following information was submitted to staff and is attached as exhibits to this memorandum:

Exhibit 12: July 23, 2014 letter from Santa Fe Solid Waste Management Agency

Exhibit 15: Rural Conservation Alliance Documentation Regarding Commissioner Questions

Exhibit 16: Letters from Citizens Received after June 11, 2014

**RECOMMENDATIONS:**

**CDRC Recommendation:** The County Development Review Committee recommended denial of the Applicants request for zoning approval to create a mining zone by a 5-2 voice vote.

**Staff Recommendation:** Conditional approval for the creation of a mining zone, on a 50 acre  $\pm$  site, to allow the extraction of aggregate for the use as construction material subject to the following conditions:

1. Master Plan for all three Phases with appropriate signatures shall be recorded with the County Clerk, as per **Article V, § 5.2.5 of the Land Development Code.**
2. Staff recommends that the Board of County Commissioners require the Applicant to submit a financial security for completion of the reclamation in accordance with **Article XI, § 1.5.1.d of the Land Development Code.**

**EXHIBITS:**

1. May 27, 2014 Staff Report (without exhibits)
2. Minutes of June 11, 2014 BCC Meeting
3. Santa Fe County GIS Analysis of Maps Provided at June 11, 2014 BCC Meeting
4. Santa Fe County GIS Maps of View Shed Along with Homes, Businesses, and Communities
5. Letters to Pueblo of Santo Domingo and Pueblo of Cochiti
6. Letter from Tesuque Pueblo
7. Santa Fe County Finance Department Memo
8. Santo Domingo Mine Site
9. Listing of property from website
10. Santa Fe County Bulk Water Information
11. City of Santa Fe Effluent Information/ Ground Water Quality Bureau Review
12. Letter from the Santa Fe Solid Waste Management Agency
13. Visibility Analysis - Photos
14. Water Budget Analysis by Karen Torres, County Hydrologist
15. Rural Conservation Alliance Documentation Regarding Commissioner Questions
16. Letters from Citizens Received after June 11, 2014